

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
2000 Biennial Regulatory Review --)	CC Docket No. 00-229
Telecommunications Service Quality)	
Reporting Requirements)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. Introduction

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these replies to comments filed in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.¹ OPASTCO is a national trade association of over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 USC §153(37). OPASTCO agrees with commenters who oppose the proposed extension of service quality reporting requirements to new classes of carriers and services, based on procedural grounds and on account of the disproportionate costs to small carriers and the lack of attending benefits to the public.

¹ 2000 Biennial Regulatory Review -- Telecommunications Service Quality Reporting Requirements, Notice of Proposed Rulemaking, CC Docket No. 00-229, FCC 00-399 (rel. Nov. 9, 2000)(NPRM).

II. Imposing Service Quality Reporting Requirements On Small Carriers Does Not Meet The Commission's Own Test Regarding The Imposition Of New Obligations In A Biennial Review Proceeding

Several commenters noted that a biennial review proceeding, designed to reduce and streamline regulations, is an inappropriate venue to propose increasing the regulatory burdens placed upon small carriers.² This principle is also clearly elucidated by the Commission's Report on the 2000 Biennial Review.³ The Report contends that a biennial review proceeding may result in the creation of new obligations, but only under two stringent conditions: the new rules must (1) be less burdensome than existing requirements, and (2) must serve the public interest.⁴ The NPRM's proposal to extend service quality reporting requirements to small carriers⁵ fails both of the Commission's own tests: the new obligations would impose greater burdens upon small carriers, while doing little or nothing to benefit the public interest.

A. The Proposed Reporting Requirements Would Be More Burdensome Than Existing Requirements On Small Carriers

Any proposal that would impose new obligations where none existed before would obviously result in additional burdens. This is clearly contrary to the intent and purpose of the biennial review process. The suggestion that small carriers, which are not required to file service quality reports with the Commission, should now be saddled with this burden (even in a

² United States Telecom Association (USTA), p. 2; National Telephone Cooperative Association (NTCA), p. 2; Independent Telephone & Telecommunications Alliance (ITTA), p. 2, pp. 5 - 7; Rural Local Exchange Carriers (RLECs), pp. 1 - 2; Vermont ITCs, pp. 6 - 7; Bluestem Telephone Company, Chautauqua & Erie Telephone Corporation, Gt Inc Dba Gt Com Inc, Sunflower Telephone Company, Inc. and Taconic Telephone Corporation (Bluestem *et. al.*), pp. 6 - 8.

³ *The 2000 Biennial Regulatory Review*, Report, CC Docket No. 00-175, FCC 00-456 (rel. Jan. 17, 2001)(Report).

⁴ *Ibid.*, para. 19.

⁵ NPRM, para. 29.

streamlined form) is logically inconsistent with the Commission's Report, and must therefore be rejected.⁶

B. Nothing In The Record Indicates That Imposing Service Quality Reporting Requirements On Small Carriers Would Benefit The Public Interest

Commenters also accurately assert that there is no indication that increasing reporting obligations on small carriers would serve the public interest.⁷ There is no data or even anecdotal evidence implying that small carriers' service quality is deficient. Similarly, there is no evidence in the record which leads to the conclusion that the costs of compliance with the new requirements -- which must ultimately be paid for by consumers -- might be outweighed by any public benefit.⁸ The mere notion that some consumers might conceivably benefit from the availability of additional data is not sufficient to justify imposing a new regulatory burden on small carriers. The likelihood that consumers -- particularly those of OPASTCO members, which have a track record of high quality service -- would utilize service quality report information is scant.⁹ Hence, the costs and burdens of complying with the new requirements would be highly disproportionate to any assumed benefits.

⁶ The proposal is also inconsistent with the Commission's *Strategic Plan* for internal reform, including treatment of small companies (*see* ITTA, p. 9 (cite omitted)).

⁷ ITTA, pp. 5 - 9; NTCA, pp. 2 - 4; USTA p. 5; Bluestem *et. al.* pp. 11 - 15; Vermont ITCs, pp. 5 - 7.

⁸ *See* OPASTCO comments, *Biennial Review 2000 Staff Report*, CC Docket No. 00-175 (fil. Oct. 10, 2000), pp. 5 - 6: "OPASTCO believes that the unique role played by small, rural [incumbent local exchange carriers (ILECs)] in providing vital services to all consumers in difficult, high-cost environments merits the use of the most stringent possible standards by the Commission when it measures the costs versus the benefits of new regulations. As a general rule, if quantifiable data is not available which clearly demonstrates that the benefits of new regulations outweigh the costs to small ILECs and their customers, then the Commission should refrain from imposing such new regulations on small ILECs."

⁹ Regulators should consider that many small carriers operate in "tight-knit communities" (NTCA, p. 3) where it is not uncommon for many or even most residents to be familiar with one other. While such

ITTA's comments include a cogent explanation of why both Congress and the Commission have differentiated between large and small carriers.¹⁰ Reasons include higher costs, challenging geography and other economic factors.¹¹ Subjecting small carriers to the same regulatory regime as large carriers reduces the ability of small carriers to cater to consumer needs and effectively respond to new competitive marketplace pressures. By the same token, expanding reporting requirements to new classes of services, such as broadband, is similarly ill-advised, as it would only serve to thwart the development of these dynamic new offerings while offering little, if any, benefit to the public.¹²

III. Response to the Initial Regulatory Flexibility Analysis

Commenting parties submitted detailed data in response to the NPRM's Initial Regulatory Flexibility Analysis (IRFA).¹³ These parties clearly demonstrate that the small size of the carriers in question, as well as their higher per-customer costs, make additional reporting requirements disproportionately costly. The IRFA did offer viable alternatives, such as exempting small carriers or allowing them to report voluntarily.¹⁴ However, as the regulating body, it is the responsibility of the Commission to estimate the costs of its proposed burdens on small carriers. Yet the IRFA did not provide quantitative data demonstrating either costs or

environments are increasingly rare, they do permit personal, one-on-one service to resolve problems that might arise in ways that larger, more bureaucratic businesses cannot. *See also* USTA p. 2.

¹⁰ ITTA, pp. 8 - 10.

¹¹ NTCA p. 3; USTA p. 5. *See also* Rural Task Force White Paper #2, *The Rural Difference*, at <http://www.wutc.wa.gov/rtf>.

¹² USTA, p. 5. Furthermore, RLECs convincingly argue (pp. 19 - 21) that if the Commission subjects small ILECs to new reporting requirements, wireless and other nontraditional providers should also be included.

¹³ RLEC Comments on the IRFA (fil. Jan. 12, 2001); Bluestem, *et. al.* Comments on the IRFA (fil. Jan. 12, 2001); *see also* Vermont ITCs Comments on Proposed Information Collections (fil. Jan. 3, 2001).

¹⁴ IRFA (*see* NPRM, p. 25).

supposed benefits. Even if commenting parties had not provided data regarding the costs, the lack of data showing benefits should be sufficient to prevent the imposition of additional burdens on small carriers.¹⁵

This is underscored by the fact that the Office of Management and Budget (OMB) has wisely declined to approve the extension of reporting requirements to small carriers.¹⁶ Specifically, the OMB expressed concerns regarding the costs such requirements would impose, and the lack of “a significant benefit being shown.”¹⁷ Although the OMB correctly cited the Paperwork Reduction Act to provide a statutory basis for its decision,¹⁸ the OMB’s concerns may serve as a guidepost for how a regulatory flexibility analysis should be conducted. The rulemaking agency should attempt to quantify the anticipated benefits of a proposed rule, so that both the agency and commenting parties may weigh these benefits against the anticipated costs the proposal will impose on small companies and their customers. If, as in this case, data regarding benefits and costs is lacking in the regulatory flexibility analysis, agencies should generally refrain from imposing new rules on small companies.

IV. Conclusion

The Commission should not impose new service quality reporting requirements on small carriers as proposed in the NPRM. OPASTCO agrees with the many commenters who illustrated the procedural flaws with using a biennial review proceeding to increase regulatory

¹⁵ See fn. 8, above.

¹⁶ Memorandum from Edward Springer, OMB, to Judy Boley, FCC, *Comments on Proposed New Information Collection, the ARMIS Service Quality Reports* (Jan. 29, 2001), p. 1.

¹⁷ *Id.*

¹⁸ *Id.*

requirements on small carriers. The Commission's own standards require that any new rules generated in a biennial review proceeding must be less, not more, burdensome than existing regulations, and must benefit the public interest. Significantly, many commenters also correctly stated that the assumed benefits of subjecting small carriers to service quality reporting requirements are negligible and not outweighed by the burdens and costs that would be imposed on small carriers and their customers. Regulators should strive to avoid the imposition of additional burdens on small carriers. Such impositions should occur only after a careful and complete evaluation, which clearly demonstrates that the real costs are distinctly outweighed by substantial benefits.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich
Senior Policy Analyst

OPASTCO
21 Dupont Circle NW
Suite 700
Washington, DC 20036
(202) 659-5990

February 16, 2001

CERTIFICATE OF SERVICE

I, Tiffani N. Belk, hereby certify that on this, the 16th day of February, 2001, a copy of OPASTCO's comments was sent by United States mail, first class, postage prepaid, to those listed on the attached sheet.

/s/ Tiffani N. Belk

Tiffani N. Belk

SERVICE LIST
OPASTCO REPLY COMMENTS
CC Docket No. 00-229
FCC 00-399

Kathleen M. Marshall
Executive Director
Regulatory & Public Policy
Advanced TelCom Group, Inc.
110 Stony Point Road, 2nd Floor
Santa Rosa, CA 95401-4118

Kimberly M. Kirby
Jonathan Askin
Association for Local Telecommunications
Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

Mark C. Rosenblum
Richard H. Rubin
James W. Grudus
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920

James L. Casserly
Minitz, Levin, Cohen, Glosky and Popeo,
P.C.
Attorney for AT&T Corp.
701 Pennsylvania Avenue, NW
Washington, D.C. 20004

Law Offices of Susan Bahr
Attorney for Rural ILECs, Bluestem *et. al.*,
and Vermont ITCs
P.O. Box 86089
Montgomery Village, MD 20886-6089

Richard M. Sbaratta
Stephen L. Earnest
BellSouth Corporation
Suite 4300

675 West Peachtree Street, N.E.
Atlanta, GA 30309

Genevieve Morelli
David C. Kirschner
Kelley Drye & Warren, LLP
Attorneys for the Joint Commenters
1200 19th Street, N.W.
Washington, D.C. 20036

Jason Oxman,
Senior Counsel
Covad Communications Company
600 14th Street, N.W.
Washington, D.C. 20005

Kenneth Peres
Debbie Goldman
George Kohl
Communications Workers of America
501 3rd Street, N.W.
Washington, D.C. 20001

General Counsel
Dynergy CLEC Communications, Inc.
1000 Louisiana, Suite 5800
Houston, TX 77002-5050

David N. Baker, Vice President
Earthlink, Inc.
1430 West Peachtree St., NW
Suite 400
Atlanta, GA 30309

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison
Florida Public Service Commission
2540 Shumard Oak Boulevard

Tallahassee, FL 32399-0872

Richard Metzger
Pamela Arluk
Focal Communications Corporation
7799 Leesburg Pike
Suite 850 N
Falls Church, VA 22043

George N. Barclay, Esq.
Michael J. Ettner, Esq.
General Services Administration
1800 F Street, NW, Room 4002
Washington, DC 20405

Sarah A. Naumer, Asst. Atty. General
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

General Counsel
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington Street, Suite E306
Indianapolis IN 46204

David W. Zesiger, Executive Director
ITTA
1300 Connecticut Ave. NW, Suite 600
Washington, DC 20036

Karen Brinkman
Richard R. Cameron
Benoit Jacqmotte
Attorneys for ITTA
Latham & Watkins
1001 Pennsylvania Ave. NW, Suite 1300
Washington, DC 20004

David Svanda, Commissioner
Robert Nelson, Commissioner

Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

James Bradford Ramsey, Gen. Counsel
Sharla Barklind, Asst. Gen. Counsel
National Association of Regulatory Utility
Commissioners
1101 Vermont Ave., NW Suite 200
Washington, DC 20005

Kathleen F. O'Reilly
National Association of State Consumer
Utility Advocates
414 "A" Street SE
Washington, DC 20003

R. Scott Reiter
L. Marie Guillory
Daniel Mitchel
NTCA
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Jodi Jenkins Bair, Asst. Atty. General
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Sharon J. Devine
Kathryn Marie Krause
James T. Hannon
Attorneys for Qwest Corp.
Suite 700
1020 19th Street, NW
Washington, DC 20036

Paul E. Dorin
Roger K. Toppins
Paul Mancini
Attorneys for SBC Inc.

1401 I Street NW, Room 1100
Washington, DC 20005

R. Russell Miller, Vice President
Siemens Medical Solutions
Health Services Corporation
51 Valley Stream Parkway
Malvern, PA 19355

Jay C. Keithly
Sprint Corp.
401 9th Street NW, #400
Washington, DC 20004

Rick Zucker
Sprint Corp.
6360 Sprint Parkway KSOPHE0302
Overland Park, KS 66251

Laurence E. Harris
Terri B. Natoli
Edward B. Krachmer
Teligent, Inc.
8065 Leesburg Pike, Suite 400
Vienna, VA 22182

Laurie Pappas, Deputy Public Counsel
Texas Office of Public Utility Counsel
1701 N. Congress Avenue, Suite 9-180
Austin, TX 78701

Pat Wood III, Chairman
Judy Walsh, Commissioner
Brett A. Perlman, Commissioner
Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter

Julie E. Rones
Attorneys for USTA
1401 H Street, NW Suite 600
Washington, DC 20005

Joseph DiBella
Verizon
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Lynda L. Dorr
Secretary to the Public Service Commission
Of Wisconsin
610 North Whitney Way, P.O. Box 7854
Madison, WI 53707-7854

Alan Buzacott
WorldCom
1801 Pennsylvania Ave. NW
Washington, DC 20036

Steve Ellenbecker, Chairman
Steve Furtney, Deputy Chairman
Kristin Lee, Commissioner
Wyoming Public Service Commission
2515 Warren Avenue, Suite 300
Cheyenne, WY 82002

International Transcription Service, Inc.
1231 20th Street, NW
Washington, D.C. 20036

Judy Boley
Federal Communications Commission
Room 1-C804
445 12th Street, SW
Washington, D.C. 20554

Edward Springer
Office of Management and Budget
Desk Officer
10236 NEOB

725 - 17th Street, NW
Washington, D.C. 20503

Eric Menge
Assistant Chief Counsel for
Telecommunications
Office of Advocacy
U.S. Small Business Administration
409 3rd Street SW
Washington, DC 20416

Susan H. Steiman, Assoc. Gen. Counsel
Federal Communications Commission
Office of General Counsel
Administrative Law Division
445 12th St., SW
Washington, DC 20554